on the question of whether or not it is synthetic. It would appear that a white shirt is not included if it is made of cotton but is included if it is made of cellular cloth or nylon or artificial silk. Thus, for example, as regards the ordinary wear of Chinese women of the domestic servant class the white upper garment would appear not to be included unless made of artificial silk or some other synthetic cloth while the black lower garment is included irrespective of the material of which it is made. Again, if the question were to come before me I should find the very greatest difficulty in deciding whether the definition included white cotton cloth with a coloured pattern printed upon it.

These questions are not academic. The rule of the criminal law is that the prosecution has to prove its case. In particular, in any prosecution under Regulation 17EA it has to prove that the article moved is a "restricted article" and comes within the statutory definition. How this can be proved and how any Magistrate can be satisfied on the point in the absence of expert evidence, I fail to see. I trust that some attempt will be made to render the Regulations more easily intelligible. Until that is done, I can only impress upon Magistrates the need for the greatest care in dealing with prosecutions under it where the article concerned is any sort of cloth.

Before parting from the case I cannot refrain from quoting the following passage from the judgment of Lord Goddard C.J. in the case of *Brierley v. Philips*[1] :—

"If Orders are made to create criminal offences, it is surely desirable that they should be stated in language which the persons who may commit the offences — in this case, as I say, humble people like cottagers — can understand. It is a very serious thing to produce Orders or regulations, whether under Defence Regulations or anything else, creating offences which can be dealt with as very serious matters, if they are couched in language which does not make clear whether a person is committing an offence or not. I am certainly not prepared ever to support Orders and to find people guilty of criminal offences when the Orders which they are charged with violating are couched in language which is open to all sorts of meanings and causes all sorts of difficulties, so that the unfortunate people cannot know whether they are acting legally or not."

Conviction confirmed.

MOHAMED BIN IBRAHIM v. REGINA

[A. Cr. J. (Whyatt C.J.) September 27, 1955]

[Singapore — Magistrate's Appeal No. 100 of 1955]

Criminal Procedure — Summary trial — Cross-summonses — Consolidated and heard together — Failure of justice — Criminal Procedure Code, 1955, s. 440.

In this case there were two cross-summonses for voluntarily causing hurt which with the consent of counsel for the parties were consolidated and heard together by the learned Magistrate. After hearing both parties and their witnesses, the learned Magistrate convicted the appellant. The appellant appealed.

Held: (1) where there are two cross-summonses in which the complainant in one is the accused in the other the Magistrate has no jurisdiction to hear them together; (2) even if it were correct to regard the procedure adopted in the present case as a mere irregularity, it could not be said with reasonable certainty that the irregularity had not occasioned a failure of justice and therefore it could not be cured by the provisions of s. 440 of the Criminal Procedure Code.

[**Editorial Note:** The Court of Appeal in the Federation of Malaya recently laid down the same principle in Papathy & Anor. v. Public Prosecutor (Ipoh — F.M. Criminal Reference No. 2 of 1955). That decision will be published in due course.]

Cases referred to:—

(1) *Charter Singh v. Public Prosecutor* 1 M.C. 132.

(2) *Asiah binti Beginda Raja v. Public Prosecutor* 1 M.C. 153.

MAGISTRATE'S APPEAL.

L. Rayner for the appellant.

G. S. Hill (Crown Counsel) for the respondent.

Whyatt C.J. : — Counsel for the Crown did not support the conviction in this case. The attention of the Court was drawn to two cases reported in 1 Malayan Cases (*Charter Singh v. Public Prosecutor*[1] and *Asiah binti Beginda Raja v. Public Prosecutor*[2]) which clearly established that where there are two cross-summonses in which the complainant in one is the accused in the other the Magistrate has no jurisdiction to hear them together.

The Court invited counsel for the appellant and for the Crown to deal with the view expressed by the Editor of *Mallal's* Criminal Procedure (3rd Edition) at p. 229 that if the accused consents to cross-summonses being heard together, and subsequently appeals, he will, in view of section 448 (now section 440) of the Criminal Procedure Code not succeed in his appeal. Counsel for the appellant pointed out that the Editor had cited no authority in support of his view and submitted that the procedure adopted in the present case was not an "irregularity" but an "illegality" and therefore could not be cured by the provisions of section 448 (now section 440) of the Criminal Procedure Code. Counsel for the Crown submitted that even if it were correct to regard the matter as a mere irregularity, it could not be said with reasonable certainty that the irregularity had not occasioned a failure of justice in the present case, and that being so, the provisions of the curing section should not be invoked.

The Court agreed with the submission of counsel for the Crown and consequently did not find it necessary to decide whether the procedure adopted in this case was an irregularity within the meaning of section 448 (now section 440) of the Criminal Procedure Code.

Conviction quashed.

Appeal allowed.

Solicitors for the appellant: *L. Rayner & Co.*

LEN OMNIBUS CO. LTD. v. PUBLIC PROSECUTOR

[A. Cr. J. (Buhagiar J.) May 28, 1955]

[K. L. — Criminal Appeal No. 35 of 1955]

Criminal Procedure Code (Cap. 6), ss. 154, 164 and 422 — Joinder of more than three charges — Accused pleading guilty to more than three charges — Whether he can be convicted and sentenced for all such charges.

In this case the appellant, the registered owner of a bus, was charged with four offences in connection with the said bus against the provisions of the Motor Vehicles (Construction & Use) Regulations, 1948. The appellant pleaded guilty on all charges and was convicted and sentenced to a fine of $500 on each of the charges. On appeal it was argued that as the appellant had been charged with more than three offences at one trial, the trial became an illegal one by the reason of the provisions of s. 164 of the Criminal Procedure Code.

Held: (1) the mischief sought to be avoided by s. 164 of the Criminal Procedure Code is not so much the joinder of more than three charges as the more than three charges forming part of a single trial; (2) as the appellant had pleaded guilty in this case to all four charges there was no trial for the purposes of s. 154 of the Criminal Procedure Code and there could be no mischief which was sought to be avoided by s. 164 of the Code.

Cases referred to:—

(1) *Subramania Ayyar v. King Emperor* L.R. 28 I.A. 257; I.L.R. 25 Mad. 61.

(2) *Tara Singh v. Public Prosecutor* (1954) M.L.J. 123.

MAGISTRATE'S CRIMINAL APPEAL.

Morris Edgar for the appellant.

J. P. Kirby (Federal Counsel) for the respondent.

Buhagiar J.: — The appellant, the registered owner of bus B. 9822 authorised in PSV Permit No. 11387 under comprehensive permit No. 5, was charged with four offences in connection with the said bus against the provisions of Regulations 98, 97(1), 130 and 103 of the Motor Vehicles (Construction and Use) Regulations (G.N. 944/1948) and punishable under section 8(1) of the Road Transport Proclamation.

The appellant pleaded guilty on all charges, was convicted and sentenced to a fine of $500 on each of the charges.

This is an appeal against conviction and sentence.

The ground for the appeal against conviction is that the appellant having been charged with more than three offences at one trial, the trial became an illegal one under and by reason of the provisions of section 164 of the Criminal Procedure Code.

Counsel for the appellant referred me to the case of *Subramania Ayyar v. King Emperor*[1]. In that case the appellant was tried on an indictment in which he was charged with no less than forty-one acts extending over a period of two years; this was in direct contravention of the provisions of section 234 of the Indian Criminal Procedure Code and their Lordships held that the disobedience to an express provision as to a *mode of trial* did not come within the description of error, omission or irregularity which could be cured by section 537 of the Indian Criminal Procedure Code.

I had the opportunity of considering this *Subramania's case*[1] in *Tara Singh v. Public Prosecutor*[2] in which I made the following observations:—

"The decision in Subramania's case was considered by the Privy Council in Abdul Rahman v. King Emperor (1926) I.L.R. Rang. 53 which was a case of non-compliance with the provisions of section 360 of the Indian Criminal Procedure Code; Subramania's case was distinguished as "one which the Code positively prohibited and it was possible that it might have worked actual injustice to the accused", and section 537 of the Indian Criminal Procedure Code was held to cure the irregularity in not complying with the provisions of section 360. "To sum up", their Lordships said (at p. 69), "in the view which their Lordships take of the several sections of the Code of Criminal Procedure the bare fact of such an omission or irregularity as occurred in the case under appeal, unaccompanied by any probable suggestion of any failure of justice having been thereby occasioned, is not enough to warrant the quashing of a conviction, which on their Lordships' view, may be supported by the curative provisions of sections 535 and 537.

In Abdul Rahman's case their Lordships did contemplate circumstances in which a defect in procedure might be incurable; per contra in Subramania's case they did not say that an illegality in the form of trial is in all circumstances incurable. The two Privy Council decisions above referred to were the subject of consideration by a Full Bench of the Court of Allahabad in the case of Kapoor Chand v. Suraj Prasad, where after considering the case of Subramania the Court observed at p. 312:—

'In a later case, however, viz. Abdul Rahman v. King Emperor, their Lordships pointed out, at page 125, that in the earlier case 'it was possible that it might have worked actual injustice to the accused'. It may be that their Lordships of the Privy Council in the later case, wanted to point out that section 537 of the Code of Criminal Procedure could not cure the defect in Subramania Ayyar's case because the Code contained the provision that an irregularity, which had worked injustice to the accused, could not be cured. But it is significant that although their Lordships of the Privy Council drew a distinction between an 'illegality' and an 'irregularity' in the earlier case, which was decided in the year 1901, the legislature did not introduce the word 'illegality' in section 537 or anywhere else in the Code, although it was amended after that year. This being the state of the law, we do not think that we should introduce a distinction